Proposed Repeals

§ 10412. Proceedings and Decisions After Venue Change.

When an order changing venue is issued, all further trial level proceedings shall be conducted at, and all further trial level orders, decisions, and awards shall be issued by, the district office to which venue was changed until another order changing venue is issued.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126 and 5501.6, Labor Code.

Explanation:

This rule may be construed as contradicting current rule 107701.1(a)(2) (proposed rule 10820(a)(2)) which provides that "a lien conference may be set at any district office without necessity of an order changing venue."

§ 10430. Letters of Appointment for Medical Examinations.

After the filing of an Application for Adjudication, each party will notify all other parties, and their attorneys or representatives, of any medical appointment scheduled for the purposes of medical-legal evaluation. That notice shall be given at the same time the injured worker is advised of the appointment.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5401 and 5703, Labor Code.

Explanation:

Rule 10430 (formerly rule 10418) was originally adopted in 1990 and renumbered in 2002. Prior to April 19, 2004, it was possible for a party to obtain a medical-legal evaluation without engaging with an opposing

party. After the amendments made to Labor Code section 4062 by SB 899 and corresponding regulations adopted by the Division of Workers' Compensation (See 8 Cal. Code Regs., tit. 8, § 1 et seq.), a party cannot obtain an evaluation of an injured worker without providing notice through the panel qualified medical evaluation process. Therefore, this regulation is no longer necessary.

§ 10451.2. Determination of Medical Treatment Disputes.

(a) The following procedures shall be utilized for the determination of all disputes over medical treatment and related goods and services.

(b) For purposes of this section, "medical treatment" means any goods or services provided in accordance with Labor Code section 4600 et seq., including but not limited to services rendered by an interpreter at a medical treatment appointment.

(c) Medical Treatment Disputes Not Subject to Independent Medical Review and/or Independent Bill Review

(1) Where applicable, independent medical review (IMR) applies solely to disputes over the necessity of medical treatment where a defendant has conducted a timely and otherwise procedurally proper utilization review (UR). Where applicable, independent bill review (IBR) applies solely to disputes directly related to the amount payable to a medical treatment provider under an official fee schedule in effect on the date the medical treatment was provided. All other medical treatment disputes are non-IMR/IBR disputes. Such non-IMR/IBR disputes shall include, but are not limited to:

(A) any threshold issue that would entirely defeat a medical treatment claim (e.g., injury, injury to the body part for which treatment is disputed, employment, statute of limitations, insurance coverage, personal or subject matter jurisdiction);

(B) a dispute over a UR determination if the employee's date of injury is prior to January 1, 2013 and the decision is communicated to the requesting physician prior to July 1, 2013;

(C) a dispute over whether UR was timely undertaken or was otherwise procedurally deficient; however, if the employee prevails in this assertion, the employee or provider still has the burden of showing entitlement to the recommended treatment;

(D) an assertion by the medical treatment provider that the defendant has waived any objection to the amount of the bill because the defendant allegedly breached a duty prescribed by Labor Code sections 4603.2 or 4603.3 or by the related Rules of the Administrative Director;

(E) an assertion by the defendant that the medical treatment provider has waived any claim to further payment because the provider allegedly breached a duty prescribed by Labor Code section 4603.2 or by the related Rules of the Administrative Director;

(F) dispute over whether the employee was entitled to select a treating physician not within the defendant's medical provider network (MPN);

(G) an assertion by the defendant that an interpreter who rendered services at a medical treatment appointment did not meet the criteria established by Labor Code sections 4600(f) and (g) and 5811(b)(2) and the Rules of the Administrative Director, as applicable; and

(H) an assertion by the defendant that an interpreter was not reasonably required at a medical treatment appointment because the employee proficiently speaks and understands the English language.

(2) Medical treatment disputes not subject to IMR and/or IBR shall be resolved as follows:

(A) if the dispute is between an employee and a defendant, the procedures for claims for ordinary benefits shall be utilized, including the procedures for an expedited hearing, if applicable; and

(B) if the dispute is between a medical treatment provider and a defendant, the procedures applicable to lien claims shall be utilized, including the filing of a lien claim under Labor Code section 4903(b) and the payment of a lien filing fee or lien activation fee, if applicable.

(3) If a non-IMR/IBR dispute is resolved in favor of the employee or the medical treatment provider, then any applicable IMR and/or IBR procedures established by the Labor Code and the Rules of the Administrative Director shall be followed. In addition:

(A) Any appeal of an IMR determination of the Administrative Director shall comply with the procedures of section 10957.1; and

(B) Any appeal of an IBR determination of the Administrative Director shall comply with the procedures of section 10957.

Authority: Sections 133, 4603.2(f), 4604, 5304, 5307, 5309 and 5708, Labor Code.
Reference: Sections 4061, 4061.5, 4062, 4600, 4603.2, 4603.3, 4603.6, 4604.5, 4610, 4610.5, 4610.6, 4616.3, 4616.4 and 4903(b), Labor Code.

Explanation:

This rule does not provide additional information to the practitioner beyond what is in the relevant statutes and rules. In particular, Labor Code section 5502(b)(2) provides that an employee may request an expedited hearing regarding "[t]he employee's entitlement to medical treatment pursuant to section 4600, except for treatment issues determined pursuant to sections 4610 and 4610.5."

§ 10454. Automatic Reassignment after Reversal on Reconsideration.

Notwithstanding rule 10453, where the Appeals Board reverses a decision of a workers' compensation judge on an issue of the statute of limitations, jurisdiction, employment, or injury arising out of and in the course of employment, and remands the case for further proceedings, the party who filed the petition for reconsideration that resulted in the reversal shall be entitled to automatic reassignment of the case to another workers' compensation judge upon a motion or petition requesting reassignment filed at the district office within 30 days after the decision of the Appeals Board becomes final.

Explanation:

We do not believe the automatic right to reassignment provided in this rule is advisable, or consistent with general norms of judicial practice. Specifically, we note that judges have an ethical obligation to decide the cases assigned to them, unless they are disqualified from doing so. (See Code of Judicial Ethics, Canon 3B(1).) Erroneous rulings are not a basis for seeking to disqualify a judge, especially when they are subject to review. (See, e.g., *McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6, 11; *Mackie v. Dyer* (1957) 154 Cal.App.2d 395, 400.) Vesting a party who prevails before the Appeals Board on certain issues with an automatic right of assignment undermines the general principle that judges should decide the cases assigned to them, and risks implying that some erroneous rulings may in fact be a valid basis for seeking judicial reassignment.

§ 10583. Dismissal of Claim Form--Labor Code Section 5404.5.

Where an application for adjudication for an injury on or after January 1, 1990 and before January 1, 1994, has not been filed by any of the parties, an employer or insurer seeking dismissal of a claim form for lack of prosecution shall solely utilize the procedures set forth in Labor Code Section 5404.5 and shall not seek an order of dismissal from the Appeals

Board by the filing of an application for adjudication, a request for pre-application determination or any other petition or request.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 5404.5, Labor Code.

Explanation:

Window period cases are increasingly rare and Labor Code section 5404.5 is sufficiently specific to direct a party that wishes to dismiss a claim form.

§ 10626. Examining and Copying Hospital and Physicians' Records.

Subject to Labor Code section 3762, and except as otherwise provided by law, all parties, their attorneys, agents and physicians shall be entitled to examine and make copies of all or any part of physician, hospital, or dispensary records that are relevant to the claims made and the issues pending in a proceeding before the Workers' Compensation Appeals Board.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Section 4600, Labor Code.

Explanation:

A version of this rule has been in effect since at least the 1970s. However, it does not conform to modern practice. Moreover, this Rule is duplicative of statute. As an initial matter, beginning at section 123100, the Health & Safety Code establishes a patient's absolute right to receive and review copies of their medical records, and sets forth the specific conditions and requirements for this review. (Health & Saf. Code, §§ 123100 et seq.) Further, the Evidence Code provides that medical providers "shall make all of the patient's records … available for inspection and copying by the

[patient's] attorney at law or his, or her, representative, promptly upon the presentation of the written authorization." (Evid. Code, § 1158.)

§ 10631. Specific Finding of Fact--Labor Code Section 139.2(d)(2).

Where a qualified medical evaluator's report has been considered and rejected pursuant to Labor Code section 139.2, subdivision (d)(2), the workers' compensation judge or Appeals Board shall make and serve a specific finding on the qualified medical evaluator and the Industrial Medical Council at the time of decision on the regular workers' compensation issues. The specific finding may be included in the decision.

If the Appeals Board, on reconsideration, affirms or sets aside the specific finding of fact filed by a workers' compensation judge, it shall advise the qualified medical evaluator and the Industrial Medical Council at the time of service of its decision on the petition for reconsideration. If the workers' compensation judge does not make a specific finding and the Appeals Board, on reconsideration, makes a specific finding of rejection pursuant to Labor Code Section 139.2, subdivision (d)(2), it shall serve its specific finding on the qualified medical evaluator and the Industrial Medical Council at the time it serves its decision after reconsideration.

Rejection of a qualified medical evaluator's report pursuant to Labor Code section 139.2, subdivision (d)(2) shall occur where the qualified medical evaluator's report does not meet the minimum standards prescribed by the provisions of Rule 10606 and the regulations of the Industrial Medical Council.

This rule shall apply to injuries on or after January 1, 1994.
Explanation:

This rule simply restates the relevant portions of Labor Code section 139.2(d)(2) without significant additions or refinements. Accordingly, we

propose repeal because the rule does not provide significant additional information beyond what is in the relevant statute.

§ 10632. Labor Code Section 4065—Evidence.

Where the provisions of Labor Code Section 4065 apply, the workers' compensation judge shall receive into evidence the "proposed ratings" submitted by the parties.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 4065, Labor Code.

Explanation: Labor Code section 4065 was repealed.

§ 10633. Proposed Rating--Labor Code Section 4065.

A "proposed rating" pursuant to Labor Code section 4065 shall include the appropriate disability numbers for each part of the body resulting in permanent disability and a standard rating of the factors of disability.

Where the provisions of Labor Code section 4065 have been used to determine permanent disability, the workers' compensation judge shall comply with Labor Code section 5313 and state the evidence relied upon and the reasons or grounds on which selection of the proposed rating is based.

Authority: Sections 133 and 5307, Labor Code.
Reference: Section 4065, Labor Code.

Explanation: Labor Code section 4065 was repealed.

§ 10785. Electronically Filed Decisions, Findings, Awards, and Orders.

The Appeals Board or a workers' compensation judge may electronically file any decision, findings, award, order or other document within EAMS, either by preparing the document in paper form and then scanning it into EAMS or by preparing the document directly within EAMS. Any such electronically filed document shall have the same legal effect as a document filed in paper form.

Authority: Sections 133, 5307, 5309 and 5708, Labor Code.
Reference: Sections 126, 5313 and 5908.5.

Explanation:

This rule was adopted when paper files were common and EAMS was not yet the default file storage system. Now that all files are stored electronically, this rule is unnecessary.

§ 10852. Insufficiency of Evidence.

Where reconsideration is sought on the ground that findings are not justified by the evidence, the petition shall set out specifically and in detail how the evidence fails to justify the findings.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5902 and 5903, Labor Code.

Explanation:

Current rule 10842 requires that every petition for reconsideration "shall fairly state all of the material evidence relative to the point or points at issue" and that each contention "shall be separately stated and clearly set forth." We therefore believe this regulation is redundant, as 10842 requires

the party seeking reconsideration to state all material evidence relevant to the claim and to clearly explain the basis for each contention.

§ 10874. Form.

Every compromise and release agreement shall comply with the provisions of Labor Code sections 5003-5004 and conform to a form provided by the Appeals Board.

Authority: Sections 133, 5307, Labor Code.
Reference: Sections 5001, 5002, 5003, 5004, Labor Code.

Explanation:

We have multiple forms, including the compromise and release form. This rule was redundant with current rule 10480 (proposed rule 10408) and accordingly, can be repealed with no effect.

§ 10828. Necessity for Bond.

Where a party intending to file for writ of review requests a stay of execution or withholding issuance of a certified copy of the order, decision or award that is the subject of the party's complaint, the request will ordinarily be granted, conditioned upon the filing of a bond from an approved surety equivalent to twice the probable amount of liability in the case.

Explanation:

The subject matter of this rule is adequately addressed by rule 10825.

§ 10878. Settlement Document as an Application.

The filing of a compromise and release agreement or stipulations with request for award shall constitute the filing of an application which may, in the Workers' Compensation Appeals Board's discretion, be set for hearing, reserving to the parties the right to put in issue facts that might otherwise have been admitted in the compromise and release agreement or stipulations with request for award. If a hearing is held with this document used as an application, the defendants shall have available to them all defenses that were available as of the date of filing of this document. The Workers' Compensation Appeals Board may thereafter either approve the settlement agreement or disapprove it and issue findings and award after hearing has been held and the matter submitted for decision.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 5001, 5002, 5500 and 5702, Labor Code.

Explanation:

Effective 1/1/13, the filing of declaration of readiness to proceed rather than the filing of an application triggers a defendant's obligation to pay attorney's fees pursuant to Labor Code section 4064(c). Accordingly, whether a settlement document is treated as an application no longer matters greatly. We propose repeal of this regulation as unnecessary given the change in law.

§ 10888. Resolution of Liens.

Before issuance of an order approving compromise and release that resolves a case or an award that resolves a case based upon the stipulations of the parties, if there remain any liens that have not been resolved or withdrawn, the parties shall make a good-faith attempt to contact the lien claimants and resolve their liens. A good-faith attempt requires at least one contact of each lien claimant by telephone or letter.

After issuing an order approving compromise and release that resolves a case or an award that resolves a case based upon the stipulations of the parties, if there remain any liens that have not been resolved or withdrawn, the workers' compensation judge shall:

(1) set the case for a lien conference, or

(2) issue a 10-day notice of intention to order payment of any such lien in full or in part, or

(3) issue a 10-day notice of intention to disallow any such lien. Upon a showing of good cause, the workers' compensation judge may once continue a lien conference to another lien conference. If a lien cannot be resolved at a lien conference, the workers' compensation judge shall set the case for trial.

An agreement to "pay, adjust or litigate" a lien, or its equivalent, or an award leaving a lien to be adjusted, is not a resolution of the lien.

Authority: Sections 133 and 5307, Labor Code.
Reference: Sections 4903, 4903.1, 4904, 5001, 5002 and 5702, Labor Code.

Explanation:

We propose repealing this regulation because it does not conform to current practice and because it burdens the district offices unnecessarily. In addition, Labor Code section 4903.5 now provides an 18 month statute of limitations for filing a lien claim. Accordingly, a workers' compensation judge may need to exercise discretion to delay the setting of a lien conference.

§ 10997. Request for Arbitration.

In no event will arbitration be permitted after the taking of testimony in any proceeding.

Explanation:

We propose repealing this rule because we wish to encourage agreements between the parties. Furthermore, in cases where testimony has been taken and a judge becomes unavailable, the parties may wish to proceed before a neutral arbitrator in order to achieve case resolution more quickly. Similarly, although testimony may have been taken on a threshold issue in a case, arbitration may be appropriate for the resolution of further issues in the case; the current rule implies that no arbitration may occur on any issue if there has been any testimony taken on any prior issue. While it remains likely that most arbitration agreements will occur before the taking of testimony, we see no compelling reason for an inflexible rule preventing arbitration after testimony has been taken no matter the circumstances.